

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2246 OF 2005**

Narendra Prasad Jaiswal ...Petitioner

Versus

Smt. Aruna Kiran Choudhary & Anr ...Respondents

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Mr. D.C. Mishra, Advocate for Petitioner

Mr. Y.S. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 23RD SEPTEMBER, 2005

P. C.:-

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The petitioner has prayed for quashing of process issued against him in Criminal Case No.1456 of 2000 which is pending in the Court of learned J.M.F.C., IIIrd Court, Kalyan. In the said case, process has been issued against the petitioner under Section 138 of Negotiable Instruments Act.

3. It may be stated here that the petitioner had earlier preferred an application before the learned Magistrate for recalling of process. The said application came to be rejected by the learned

Magistrate by order dated 7.6.2005 on the ground that the remedy lies to the High Court.

3. However, for the reasons recorded in the decision of this Court in the case of **V.K. Jain & Ors. Vs. Pratap V. Padode and Anr**, reported in 2005(3) **Mh.L.J. 778**, in my opinion, the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the petitioner to prefer revision before the concerned Sessions Court. The learned advocate for the petitioner states that the necessary revision would be preferred within a period of four weeks from today. I am informed that the date before the trial Court is on 30.9.2005. In view of this statement, the trial Court shall not proceed with the trial on 30.9.2005 and for a period of three weeks thereafter. It is made clear that the revision shall be preferred in respect of the order of the Magistrate issuing process against the petitioner and not in respect of order of the Magistrate rejecting the application of the petitioner for recalling of process.

5. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the same on merits after hearing necessary parties.

6. Writ Petition is disposed of.
